



**NOTICE OF PROPOSED REVISION OF REGULATIONS
AND STATEMENT OF REASONS**

**California Code of Regulations
Title 2. Administration
Division 1. Administrative Personnel
Chapter 1. State Personnel Board**

DATE: January 21, 2005

TO: ALL STATE AGENCIES, EMPLOYEE ORGANIZATIONS, AND
MEMBERS OF THE GOVERNOR'S CABINET

SUBJECT: Proposed Amendment and Repeal of Regulations Affecting
Psychological Screening of Peace Officer Candidates

AUTHORITY:

Under authority established in Government Code (GC) § 18701, the State Personnel Board (SPB) proposes to revise Title 2 of the California Code of Regulations (2CCR) §§ 172.4 through 172.11 to bring standards and procedures for psychological screening into alignment with current professional practice and recent changes made by law. This action proposes the repeal of 2CCR § 172.7.

REFERENCE:

This regulation is amended to implement, interpret, and/or make specific GC §§ 1031, subdivisions (f) and (g), 18500, 18670, 18930, 18931, 18935, 19253.5 and 19261, and Penal Code (PC) § 13601(a).

PUBLIC HEARING:

Date and Time: March 8, 2005 from 1:00 to 2:00 p.m.

Place: 801 Capitol Mall, Room 150, Auditorium
Sacramento, California

Purpose: To receive written or oral comments about this
action.

WRITTEN PUBLIC COMMENT PERIOD:

The written public comment period will close Monday, March 7, 2005, at 5:00 p.m. This comment period allows time for SPB staff to provide copies of any written comments to the five-member State Personnel Board (Board) for their consideration at the time of the hearing. Any person may submit written comments about the proposed amendments. To be considered by the Board, the appropriate person identified below must receive written comments before the close of the 45-day comment period.

Written comments may be submitted to Dr. Sherrill Leake at SPB, P.O. Box 944201, Sacramento, CA 94244-2010, or to SLeake@spb.ca.gov, or faxed to her attention at (916) 653-5677.

AVAILABILITY OF PROPOSED TEXT AND STATEMENT OF REASONS/CONTACT PERSONS:

Copies of the express terms of the proposed action, the Statement of Reasons, and all of the information upon which this proposal is based are available upon request directed to Elizabeth Montoya. The rulemaking file is available for review during normal business hours at SPB, 801 Capitol Mall, Sacramento, CA 95814. Additional information or questions regarding the substance of the proposed action should be directed to Dr. Sherrill Leake as specified above. Questions regarding the regulatory process in conjunction with this regulation should be directed to Elizabeth Montoya at the SPB, P.O. Box 944201, Sacramento, CA 94244-2010, or by telephone at (916) 654-0842 or TDD (916) 653-1498.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

If any substantial and sufficiently related changes are made to the text as a result of comments received during the public comment period, SPB will make the full text of the changed regulation(s) available for at least 15 days before the date the regulation is permanently amended.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

Section 1(b) of Article VII of the Constitution provides that civil service permanent appointment and promotions shall be made under a general system based on merit ascertained by competitive examination.

GC § 18500 authorizes SPB to facilitate the operation of Article VII of the Constitution in regard to the merit system.

GC § 18670 specifies that SPB conduct hearings and make investigations concerning the selection process.

GC § 18701 authorizes SPB to prescribe, amend and repeal regulations for the administration and enforcement of the Civil Service Act.

GC § 18930 requires that examinations for the establishment of lists be competitive and of such a character to fairly test and determine the qualifications, fitness and ability of competitors to perform the duties of the classification.

GC § 18931 specifies that SPB establish minimum qualifications for determining the fitness and qualifications of employees and applicants for examinations. It also allows SPB to require necessary evidence of fitness.

GC § 18935(c) permits SPB to declare ineligible, or withhold or withdraw from certification, prior to employment, anyone found to be “physically or mentally so disabled as to be rendered unfit to perform the duties of the position to which he or she seeks appointment.”

GC § 1031, subdivision (f) (added in 1961, amended in 1972), states that prior to employment, peace officer applicants must “be found to be free from any physical, emotional, or mental condition which might adversely affect the exercise of the powers of a peace officer” and that such a determination must be made by a qualified professional as defined in the code. Subdivision (g) of GC § 1031 permits the adoption of additional or higher standards than those required under this section. In 1998, PC § 13601, subdivision (a) was rewritten to extend the above requirement to include correctional peace officer applicants. It additionally specified that any standard for selection established under PC § 13601, subdivision (a) shall be subject to approval by the Board.

Assembly Bill (AB) 1669 (Chapter 777), introduced in February 2003, proposed an amendment to GC § 1031, subdivision (f), to more specifically define a “qualified professional” who performs mental and emotional fitness evaluations for peace officer applicants or employees. (The definition of a qualified professional who may assess physical fitness was not affected.) In addition, AB 1669 was signed into law in October 2003, with an effective date of January 1, 2005.

2CCR §§ 172.4 through 172.11 codifies the definitions, standards and procedures for pre-employment psychological screening of peace officer applicants. SPB is proposing to amend these sections as follows:

1. Repeal existing 2CCR § 172.7 relating to responsibility for psychological screening.
2. Reorganize, revise, and update terminology to include the new definition of “qualified professional” and align standards and procedures with actual practice and the current “state of the art” in the speciality area of psychological screening. These amendments will require the renumbering of certain sections.
3. Add references to GC § 1031, subdivision (g) and PC § 13601, subdivision (a).

IMPACT ON SMALL BUSINESSES:

No impact on small businesses is anticipated from the implementation of the proposed amendment. Implementing the proposed amendment will affect only State departments and current and prospective employees of State departments.

LOCAL MANDATE:

SPB has determined that the proposed action imposes no mandate upon local agencies or school districts and therefore requires no reimbursement pursuant to GC § 17561.

COST ESTIMATES OF PROPOSED ACTION:

Costs or Savings to State Agencies:

The proposed regulation will involve no additional costs or savings to any State agency.

Impact on Housing Costs:

The proposal will not affect housing costs.

Costs or Savings in Federal Funding to the State:

No impact.

Other Nondiscretionary Costs or Savings Imposed on Local Agencies:

This proposal does not impose nondiscretionary costs or savings on local agencies.

Cost Impact on Representative Private Persons or Businesses:

SPB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ASSESSMENT OF POTENTIAL ADVERSE ECONOMIC IMPACT ON BUSINESS:

SPB has made an initial determination that the proposed action will have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

ASSESSMENT REGARDING THE EFFECT ON JOBS/BUSINESSES:

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination, creation, or expansion of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES STATEMENT:

SPB must determine that no reasonable alternative considered by SPB, or that has otherwise been identified and brought to the attention of SPB, would be more effective in carrying out the purpose for which this action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FINAL STATEMENT OF REASONS:

Upon completion, copies of the Final Statement of Reasons for the proposed action may be obtained from the contact person or backup contact person when it becomes available.

ACCESSING INFORMATION REGARDING THIS RULEMAKING FILE ON THE STATE PERSONNEL BOARD WEBSITE:

The text of the proposed amendments, the Notice of Proposed Amendment of Regulations and Statement of Reasons, and if prepared and when available for review, the Final Statement of Reasons, will be on SPB's website at: www.spb.ca.gov.

STATEMENT OF REASONS:

2CCR §§ 172.4 through 172.11 codify the standards and procedures for pre-employment psychological screening of peace officer (including correctional peace officer) applicants. The proposed revisions to 2CCR §§ 172.4 through 172.11 are being made to: (1) reference GC § 1031, subdivision (f), which on January 1, 2005, was modified by AB 1669 to more specifically define a “qualified professional” who performs mental and emotional fitness evaluations for peace officer applicants or employees; (2) correct and update language so that the standards and procedures are more clearly and accurately defined and brought into alignment with the current professional “state of the art” in psychological screening as allowed by GC § 1031, subdivision (g); and (3) add appropriate references, including GC § 1031, subdivision (g) and PC § 13601, subdivision (a). The proposed changes to procedures and standards will have no impact on the way in which SPB currently conducts psychological screening. The proposed reorganization and updating of language will more accurately reflect the real world process as it has been performed for the past 18 years. Changes in the definition of a “qualified professional” are more substantive but will not impact SPB’s current professional staff. By reference, these changes more specifically and narrowly define the professional qualifications required for conducting these evaluations as follows:

Effective January 1, 2005, GC § 1031, subdivision (f) requires that qualified professionals assessing mental and emotional fitness must hold unrestricted licensure by the State of California as either: (1) a physician and surgeon who has completed formal residency training in psychiatry accredited by the Accreditation Council for Graduate Medical Education, and has at least the equivalent of five full-time years of experience in the diagnosis and treatment of emotional and mental disorders, including the equivalent of three full-time years accrued after completion of the psychiatric residency program; or (2) a psychologist with a doctoral degree and the equivalent of five full-time years of experience in the diagnosis and treatment of emotional and mental disorders, including the equivalent of three full-time years accrued post doctorate. The qualified professionals defined above must also meet any additional training requirements subsequently imposed by the Peace Officer Standards and Training Commission (POST) and/or the Correctional Peace Officer Standards and Training Commission (CPOST).

Laura M. Aguilera
Assistant Executive Officer

REGULATIONS GOVERNING PSYCHOLOGICAL SCREENING

For this amendment, text added to the regulation is indicated by underline and text deleted from the regulation is indicated by ~~strikethrough~~.

TITLE 2. Administration DIVISION 1. Administrative Personnel CHAPTER 1. State Personnel Board SUBCHAPTER 1. General Civil Service Regulations ARTICLE 8. Examinations

§ 172.4. Definition of Psychological Screening.

~~Psychological screening is that part of the selection process whereby approval or disapproval for appointment to a peace officer position is based on a psychological evaluation performed by a qualified professional.~~ the mandatory pre-employment assessment of the psychological fitness of candidates for appointment as peace officers including peace officers in either a youth or adult correctional facility.

NOTE: Authority cited: Sections 18211, 18213 and 18701, Government Code. Reference: Sections 1031(f), subdivision (f) and 18931, Government Code. Section 13601, subdivision (a), Penal Code.

§ 172.5. Definition of Qualified Professional.

~~A qualified professional pursuant to Section 172.4 shall be either 1) any licensed physician and surgeon or 2) any licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders.~~ shall meet the criteria set forth in Government Code Section 1031, subdivision (f).

NOTE: Authority cited: Sections 18211, 18213 and 18701, Government Code. Reference: Section 1031(f), subdivision (f), Government Code. Section 13601, subdivision (a), Penal Code.

§ 172.6. ~~Conduct of~~ Responsibility for Psychological Screening.

~~The board shall be responsible for conducting psychological screening pursuant to Section 1(b) of Article VII of the Constitution of the State of California and Government Code Section 18931.~~ psychologically screen candidates for peace officer classifications, unless the board delegates to an appointing power the authority to

conduct psychological screenings in accordance with this regulation. No appointing power shall conduct any psychological screenings without prior board approval. authorization. Any request for approval authorization must be submitted in writing to the board. An appointing power authorized by the board to conduct psychological screening shall do so in accordance with the procedures defined in Sections 172.7, 172.8, 172.9, and 172.10.

NOTE: Authority cited: Sections 18211, 18213 and 18701, Government Code.
Reference: Section 18500, Government Code.

§ 172.7. Responsibility for Psychological Screening.

~~Upon the request of an appointing power and subject to board approval, the board shall conduct, or designate an appointing power to conduct, psychological screening of candidates for each class of public officers or employees declared by law to be peace officers. An appointing power designated by the board to conduct psychological screening shall do so in accordance with the procedures defined in Sections 172.8, 172.9, 172.10, and 172.11.~~

~~NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 1031(f) and 18931, Government Code.~~

§ 172.8.7. Standards and Procedures for Psychological Screening.

The standards and procedures for conducting psychological screening shall be as follows:

~~(1) Evaluations concerning the emotional stability of peace officer candidates must be made by a qualified professional as defined in Section 172.5. Minimum Psychological Standards. In order to be certified as a peace officer, a candidate must be found to be free from any job relevant psychological, emotional or mental traits, characteristics, or conditions that might adversely affect the performance of the duties and powers of a peace officer.~~

~~(2) The screening procedures must include a minimum of two written psychological tests. At least one test must be based on patterns of abnormal behavior and at least one must assess characteristics of normal behavior. Psychological Tests. Each candidate shall take a minimum of two written psychological tests (inventories) consistent with the requirements of the Commission on Peace Officer Standards and Training (POST).~~

~~(3) Any decision to disqualify must be based, in part, on a clinical interview which confirms the results of the written tests and substantiates the withholding or withdrawal of certification pursuant to SPB Section 172.9. Evaluation Interview. Each candidate shall have a face-to-face evaluation interview conducted by a qualified professional as defined in Section 172.5 and selected by the board's Psychological Officer. With respect to each candidate, the interviewing qualified professional shall~~

have prior access to all psychological screening tests and questionnaire data, summaries of available prior screening reports, summaries of available prior mental health evaluation/treatment records and salient medical records, and a summary of the appointing power's background investigation report.

(4) Report of Findings. The interviewing qualified professional shall submit to the board's Psychological Officer a recommendation as to whether the candidate meets the minimum psychological standards for appointment as a peace officer, together with a detailed report of findings and opinions that explain and support the recommended decision.

(5) Screening Determination. The board's Psychological Officer shall determine whether candidates should be certified as meeting the psychological standards for appointment as peace officers, subject to the right of appeal to the board. In determining whether a candidate meets the psychological standards for appointment as a peace officer, the board's Psychological Officer shall consider the qualified professional's report of findings, written psychological test data, and substantiating behavioral evidence derived from one or more of the following sources: prior evaluation and/or treatment records; background investigation or other information collected by the appointing power or the board; the candidate's self-report of personal history; and behavior manifested in the evaluation interview.

NOTE: Authority cited: Sections 18211, 18213 and 18701, Government Code.
Reference: Sections 1031(f), subdivisions (f) and (g) and 18931, Government Code.
Section 13601(a), Penal Code.

§ 172.9.8. Psychological Screening Withhold from Certification.

~~The board may withhold or withdraw from certification, prior to appointment, any person with an emotional or mental condition which might adversely affect the exercise of the powers of a peace officer. Such a condition shall include any clinical psychopathology (including personality disorders) which presents an imminent and substantial risk to safe and effective job performance. Such withholding or withdrawal of certification shall be substantiated by evidence of behavior manifested by the candidate which corroborates the presence of the psychopathology. The behavior need not be observed directly, as the evidence of such behavior may be obtained from (1) the clinical interview conducted with the candidate. (2) information collected by the board or the appointing power during the selection process or otherwise prior to appointment, or (3) information provided by the candidate verbally or in writing prior to appointment.~~
candidate who does not meet the minimum psychological standards as defined in Section 172.7(1).

NOTE: Authority cited: Sections 18211, 18213 and 18701, Government Code.
Reference: Section 18935, Government Code.

Psychological Screening Regulations

§ 172.40.9. Appeal of Psychological Screening Withhold.

Candidates withheld or withdrawn from certification pursuant to Section 172.98 may ~~appeal the disqualification according to the procedures described in Section 51.2.~~ file a written appeal. Any such appeal shall be filed within 30 days after the candidate is notified that he or she had been withheld or withdrawn from certification. Upon receipt of the written appeal, the Appeals division will forward to the candidate instructions for obtaining an evaluation from an outside qualified professional selected by the candidate, including a release form to be signed by the candidate authorizing the release of psychological screening records to the qualified outside professional. The appeal may be dismissed if the candidate fails to return the signed authorization prior to obtaining an evaluation from the outside professional. The qualified outside professional shall, within 90 days of the date that the appeal is filed with the board, submit a signed written report stating an opinion as to whether the candidate meets the minimum psychological standards for appointment as a peace officer, together with documentation of findings that explain and support that opinion. The appeal may be dismissed if the selected outside professional does not submit the requisite report within the 90 day time period. The appeal shall be dismissed if the qualified professional selected by the candidate does not submit an evaluation report recommending that the candidate meets the minimum psychological standards for appointment as a peace officer. Upon timely receipt of a positive evaluative opinion and report from the selected outside professional, the appeal shall be scheduled for review.

NOTE: Authority cited: Sections 18211, 18213 and 18701, Government Code.
Reference: Section 18670, Government Code.

§ 172.44.10. Retention of Psychological Screening ~~Testing Materials.~~ Records.

~~All~~ The board shall retain all psychological screening testing materials ~~shall be retained~~, written reports and related records for a minimum of five years ~~and~~. These records shall be the exclusive property of the board. Confidentiality of these materials and related information shall be maintained consistent with laws governing the collection, maintenance, and release of medical and psychological information, including but not limited to the Information Practices Act of 1977 (Title 1.8 of Division Third, Part 4 of the Civil Code, commencing with ~~s~~Section 1798) and the Confidentiality of Medical Information Act (Part 2.6 of Division First of the Civil ~~e~~Code, commencing with ~~s~~Section 56).

NOTE: Authority cited: Sections 18211, 18213 and 18701, Government Code.
Reference: Section 18931, Government Code.